IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 23539 of 2003

Between:

Prabhu Steel Industries Limited Kukatpally, Balanagar, Hyderabad rep., by its Manager, B. Balraj Singh S/o. L. Vasudeva Singh

..... PETITIONER

AND

The C.P.D.C. of A.P. Limited rep., by its Superintending Engineer [Operations] North Circle, Mint Compound, Hyderabad

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ or writs order or direction declaring the letter No.350/2003 dated 24.9.2003 demanding an amount of Rs. 12,19,031.43 as dues from the petitioner company and not issuing the No-Due Certificate as illegal, arbitrary and unconstitutional and consequently direct the respondent to issue no due certificate to the petitioner company.

Counsel for the Petitioner: MR.B.VIJAYSEN REDDY

Counsel for the Respondent: MRS.M.VINOBHA DEVI (SC FOR APTRANSCO)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

TUESDAY, THE THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

CONTEMPT CASE NO : 581 of 2004

Contempt Case U/s. 10 to 12 of Contempt of Courts Act to punish the Respondents herein for violating, disobeying the Order of the High Court dated 9-1-2004 in WPMP No.29574 of 2003 in WP No. 23539 of 2003.

Between:

Prabhu Steel Industries Ltd Rep by B. Balaraj Singh
O/o Kukatpally, Balanagar, Hyderabad.

..... PETITIONER

AND

The C.P.D.C. Of A.P. Ltd Rep by Superintendent Engineer (Operation)
Sivarama Krishna Murthy, North Circle, Mint Compound, Hyderabad,.

.....RESPONDENT

Counsel for the Petitioner: MR.B.VIJAYSEN REDDY

Counsel for the Respondent: SMT.M.VINOBHA DEVI (SC for AP TRANSCO)

The Court made the following :

-

-

-

-

-

COMMON ORDER:

Heard both sides.

Since both the matters are interconnected, they are taken up for disposal.

Petitioner in this writ petition seeks a writ of Mandamus challenging the impugned proceedings, dated 24.09.2003 demanding an amount of Rs.12,19,031.43 as due, and non issuance of the no due certificate, as illegal.

Petitioner herein having fell arrears towards power consumption charges, filed W.P.No.5804 of 2001 as earlier round of litigation and ultimately, the entire arrears amount has been paid. But, now the respondents herein are demanding fresh amounts especially arising out of the contractual obligation in respect of supply of certain goods to the petitioner herein, which, according to the petitioner, is wholly unsustainable. Therefore, petitioner claims that the respondents shall issue necessary clearance certificate, having regard to the fact that there are no arrears towards power consumption charges. Further it is also the case of the petitioner that in regard to the amounts due under the aforesaid contract, already arbitration proceedings have been initiated and have culminated under a reference in O.P.No.74 of 1996 on the file of the V Additional Senior Civil Judge, City Civil Court, Hyderabad, which, according to the learned Standing Counsel for the respondent, was dismissed on 04.08.2002.

Be that as it may, the case of the petitioner is that for issuance of clearance certificate in respect of the arrears of amount already paid which was also a part of arbitration proceedings, the same cannot be mixed up with the present litigation and

that therefore non issuance of no due certificate to the petitioner is totally unsustainable.

The learned standing counsel representing the respondents placing strong reliance on the Board Standing Orders 41 (19) which says that all other dues apart from the amounts towards consumption are part of the arrears and the same can be recovered as arrears of land revenue, strenuously contended that as long as the petitioner is due of any of the arrears he cannot seek the no dues certificate.

On the other hand, learned counsel appearing on behalf of the petitioner placed reliance on the definition clause under A.P. State Electricity Board (Recovery of Dues) Act, 1984, wherein Section 2(3) contemplates that “dues” means any sum payable to Board on account of-

i. Consumption of electrical energy supplied including the minimum charges payable after disconnection and other charges payable under the terms and conditions of supply ; or

ii. Any remuneration, rent or other charges for hire, inspection, test, installation, connection, repairs, maintenance or removal of any electrical meter, electrical machinery, control, gear, fittings, wires or apparatus for lighting, heating, cooling or motive power for any other purpose for which electricity can or may be used, or any industrial or agricultural machinery operated by electricity;

iii. Price of any such goods as aforesaid taken on loan but not returned;

Therefore contended that the amounts due under the contract cannot form part of such dues towards consumption.

Learned counsel for the petitioner further submitted that under the impugned demand, two components have been made--one for a sum of Rs.4,89,116.47 and the other for Rs.7,28,214.96. It is submitted that as per the interim order granted earlier by this Court, the petitioner has paid the above said sum of Rs,4,89,116,47. Therefore, the balance which remains to be payable, according to the respondent-authorities, is only under the second head i.e. Rs.7,28,214.96. Admittedly, the amount as claimed under Second head has formed part of the arbitration proceedings as stated above, and in view of the reference O.P.No74 of 1996 was already disposed of on 04.08.2003, it is always open for the respondents to file execution petition in the civil suit and recover the same. Having regard to the fact that such safeguard is available to the respondent-Corporation especially through

process of Court by way of an execution, it cannot be said that there are any dues existing in respect of some or otherwise. Therefore, the respondent shall issue the no due certificate as sought for by the petitioner. It is also submitted by the learned Standing Counsel for the respondents that the petitioner has already sold the property.

Considering the submissions made and on perusal of the material, it would be suffice, in the interest of justice, that the respondents are entitled to file an execution petition and take all such steps which they are entitled to, under law, on the civil side in the aforesaid civil proceedings or otherwise and recover the said amount. However, the same cannot form part of the dues for refusing to issue the no due certificate.

In view of the same, writ petition is allowed and respondents are directed to issue no due certificate to the petitioner herein within a period of six weeks from to day. Having regard to the orders passed in the main Writ Petition, the Contempt Case is no longer survives and accordingly the same is dismissed. No costs.

That Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this third day the August of Two Thousand and Four.

_____

klp/kvsn 03-08-2004

To

1. The Superintending Engineer, The C.P.D.C. of A.P. Limited [Operations] North Circle, Mint Compound, Hyderabad

2. Two C D copies.